



ENERGY RETAIL CODE

Version 2

February 2006

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Revisions to this Code

Version No.	Date	Nature of Amendment
2	February 2006	Addition of sub-clause 3.3 in relation to bulk hot water billing requirements Amendment to sub-clause 4.2 to clarify requirements for bills based on interval data

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ENERGY RETAIL CODE

DETERMINATION

1. The *Commission* determines that:
 - (a) the terms and conditions set out in Parts 1 to 9 of this Code apply on and from 1 January 2005 for the purposes of section 36 of the *Electricity Act* and of section 43 of the *Gas Act*:
 - to any *market contract* made on or after 1 January 2005;
 - to any *energy contract* arising from the acceptance of a *standing offer*; and
 - to any deemed contract;
 - (b) the terms and conditions set out in Parts 1 to 9 of the *Electricity Retail Code* dated 31 October 2001 continue to apply for the purposes of section 36 of the *Electricity Act* to any *electricity contract* made before 1 January 2005 that is a *market contract*; and
 - (c) the terms and conditions set out in Parts 1 to 9 of the *Gas Retail Code* dated 18 December 2002 continue to apply for the purposes of section 43 of the *Gas Act* to any *gas contract* made before 1 January 2005 that is a *market contract*.
2. The *Commission* further determines that if:
 - (a) a person's aggregate supply of gas taken from a *supply point* or ancillary *supply point* has been, or, in the case of a new *supply point* or ancillary *supply point*, is likely to be, more than 5,000 gigajoules in any year commencing on or after 1 September 2000 and the person is a relevant customer,then:
 - (c) despite paragraph 1(a) above, a *retailer* and the *relevant customer* may agree to include a term or condition in a *gas contract* to which that paragraph applies which is inconsistent with any term or condition set out in this Code other than the terms and conditions set out in clauses 13, 14, 25, 26.2 to 26.4 and 29 of this Code; and
 - (d) then, despite paragraph 1(c) above, a *retailer* and the *relevant customer* may agree to include a term or condition in a *gas contract* to which that paragraph

applies which is inconsistent with any term or condition set out in the Gas Retail Code dated 18 December 2002 other than the terms and conditions set out in clauses 13, 14, 25, 26.2 to 26.4 and 29 of that Code.

RELEVANT LEGISLATION

Section 36 of the *Electricity Act* provides as follows and section 43 of the *Gas Act* is in substantially the same terms:

36. Terms and conditions of contracts for sale of electricity to certain customers

- (1) A term or condition in a contract for the supply or sale of electricity by a licensee to a relevant customer (whether entered into before or after the commencement of this section) is void to the extent that it is inconsistent with—
- (a) terms and conditions determined by the Commission that—
 - (i) specify the circumstances in which the supply of electricity to premises may be disconnected; and
 - (ii) require the licensee to provide information specified by the Commission about the rights and entitlements of customers; and
 - (iii) specify the circumstances in which the licensee requires access to premises of customers for the purpose of reading meters or otherwise; and
 - (iv) make provision for confidentiality of customer information; and
 - (b) any other terms and conditions determined by the Commission and provided for in the licence of the licensee.
- (2) If a term or condition of a contract is void pursuant to sub-section (1) because of an inconsistency with a term or condition referred to in sub-section (1)(a) or (b), that term or condition referred to in sub-section (1)(a) or (b) is deemed to form part of that contract in place of the void term or condition.

As contemplated by section 36(1)(b) of the *Electricity Act* and by section 43(1)(b) of the *Gas Act*, all of the terms and conditions determined by the *Commission* and set out in Parts 1 to 9 (inclusive) of this Code are provided for in *retailers'* electricity and gas retail licences.

STATEMENT OF PURPOSE AND REASONS

To give effect to its statutory objectives to promote a consistent regulatory approach between the electricity industry and the gas industry, the *Commission* has consolidated the terms and conditions set out in the *Electricity Retail Code* dated 31 October 2001 and the *Gas Retail Code* dated 18 December 2002 into one document, this *Energy Retail Code*.

By means of this Code the *Commission* also:

- (a) addresses issues arising in respect of *dual fuel contracts*;
- (b) implements the *Commission's* further policies which aim towards greater effectiveness in full retail competition, enhanced consumer protection for *customers* in vulnerable circumstances and consistency in regulation between States and on a national basis; and
- (c) gives effect to recent legislative developments and draws the Code into line with the *Commission's* other regulatory instruments, both from a policy and a drafting perspective.

Further details of the purpose of and reasons for this determination are included in the *Commission's* May 2004 Final Decision: 'Review of Electricity and Gas Retail Codes – Energy Retail Code.'

**THE COMMON SEAL of
THE ESSENTIAL SERVICES
COMMISSION**

was affixed pursuant to the
authority of the *Commission*
on August 2004

**JOHN C. TAMBLYN
Chairperson**

PART 1 CONNECTION

1. CUSTOMER'S APPLICATION

If a *customer* wants to be *connected* at a *supply address* by a *retailer*, the *customer* must:

- (a) make application (in person, by telephone or in *writing*);
- (b) pay any *connection* charge as and when required by their *energy contract*; and
- (c) if the *retailer* does not already have this information, provide:
 - *acceptable identification*;
 - contact details; and
 - if the request relates to a rental property, contact details for the property owner or the owner's agent.

2. RETAILER'S OBLIGATION TO CONNECT

A *retailer* must *connect* a *customer* at the *customer's supply address* as soon as practicable after the *customer* applies for *connection* in accordance with clause 1. Without limiting clause 36.1, by no later than the next *business day* after the application is made or their *energy contract* commences to be effective (whichever occurs last), the *retailer* must make a request to the relevant *distributor* to *connect* the *customer's supply address* to the *distributor's* distribution system.

PART 2 BILLS

3. ISSUING BILLS

3.1 Retailer to issue bills

A *retailer* must issue bills to a *customer* for *energy* consumed at the *customer's supply address*.

3.2 Billing cycles

A *retailer* must issue a bill to a *customer*:

- * (a) in the case of an *electricity contract*, at least every three months;
- * (b) in the case of a *gas contract*, at least every two months; and
- (c) in the case of a *dual fuel contract*, at least as often as the *retailer* and the *customer* have agreed. That agreement is not effective unless the *customer* gives *explicit informed consent*.

3.3 Bulk hot water charging

A *retailer* must issue bills to a *customer* for the charging of the energy used in the delivery of bulk hot water in accordance with the *Commission's Energy Industry Guideline No 20 – Bulk Hot Water Charging*.

4. CONTENTS OF A BILL

4.1 Form of bill

A *retailer* must prepare a bill so that a *customer* can easily verify that the bill conforms to their *energy contract*.

4.2 Information

A *retailer* must include at least the following information in a *customer's* bill:

- (a) the *customer's* name and account number, each relevant *supply address* and any relevant mailing address;
- (b) each relevant *assigned meter identifier* and *checksum* or, if any case there is no *assigned meter identifier*, the *customer's meter* number or another unique identifying mark assigned to the *customer's* metering installation;
- (c) the period covered by the bill;
- (d) the relevant *tariff* or *tariffs* applicable to the *customer*;
- (e) whether the bill is based on a *meter* reading or is wholly an estimated bill;

- (f) whether the bill is based on any substituted data (consistent with the *retailer's* obligations under clauses 17.2 and 23.2 of the *Electricity Customer Metering Code*);
- (g) the total amount of electricity (in kWh) or of gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant *tariff* applies to the *customer* and, if a *customer's meter* measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current *meter* readings, estimates or substitutes;
- (h) if the *retailer* elects to include *meter* readings or accumulated energy usage from an interval *meter* on the bill, the *meter* readings or accumulated energy usage based on quantities read or collected from the corresponding *meter* accumulation register(s);
- (i) if the *retailer* directly passes through a network charge to the *customer*, the separate amount of the network charge;
- (j) for an *electricity contract* the amount payable for electricity and for a *gas contract* the amount payable for gas;
- (k) the pay by date;
- (l) the amount of arrears or credit and the amount of any *refundable advance* provided by the *customer*;
- * (m) a summary of payment methods and payment arrangement options;
- (n) if the customer is a domestic customer, details of the availability of concessions;
- (o) a telephone number for billing and payment enquiries and a 24 hour contact telephone number for faults and emergencies;
- (p) if the customer is a domestic customer, in relevant languages, details of interpreter services; and
- (q) if the bill is a reminder notice, contact details for the retailer's complaint handling processes.

4.3 Bundled charges

On request, a *retailer* must provide a *customer* with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of *energy* comprised in the amount payable under the *customer's* bill.

4.4 Graphs

- * (a) A *retailer* must include on a *customer's* bill a graph showing the *customer's* consumption:
 - for an *electricity contract*, of electricity; and

- for a *gas contract*, of gas,

for the period covered by the bill and, to the extent that data is available:

- the *customer's* consumption for each billing period over the past 12 months; and
- a comparison of the *customer's* consumption for the period covered by the bill with the *customer's* consumption for the same period of the previous year.

(b) Clause 4.4(a) does not apply to a *customer's* first bill with a *retailer*.

4.5 Payments for electricity and gas

A *retailer* must apply a payment received from a *customer* to charges for the supply or sale of electricity and charges for the supply or sale of gas respectively as directed by the *customer*. If the *customer* gives no direction, the *retailer* must apply the payment in proportion to the relative value of those charges.

4.6 Payments for other goods or services

If beyond the supply or sale of *energy*, a *retailer* supplies other goods or services to a *customer*, the *retailer* may bill for those other goods or services separately. If the *retailer* chooses not to bill separately, the *retailer* must:

- (a) include the charge for the other goods or services as a separate item in its bill, together with a description of the other goods or services supplied; and
- (b) apply payments received from the *customer* as directed by the *customer* or, if the *customer* gives no direction, apply the payment to the charges for the supply or sale of *energy* before applying any part of it to the other goods or services.

5. BASIS OF BILL

5.1 Bills based on meter readings

A *retailer* must:

- (a) unless a *customer* gives *explicit informed consent*, base a *customer's* bill on a reading of the *customer's meter*; and
- (b) in any event, use its *best endeavours* to ensure the *customer's meter* is read at least once in any 12 months.

A *retailer* does not breach clause 5.1(b) if the *retailer* is unable to read a *meter* in any relevant period as a result of the *customer* breaching clause 25 or some other event outside the *retailer's* control.

5.2 Estimations

- (a) Despite clause 5.1, if a **retailer** is not able to reasonably or reliably base a bill on a reading of the **meter** at a **customer's supply address**, the **retailer** may provide the **customer** with an estimated bill that is either:
- based on the **customer's** reading of the **meter**, the **customer's** historical billing data or, where the **retailer** does not have the **customer's** historical billing data, average consumption at the relevant **tariff** calculated over the period covered by the estimated bill; or
 - if the **customer** is a **second tier electricity customer**, prepared on a basis that conforms with the basis used to determine **retailers'** responsibility in the wholesale electricity market for electricity supply under **applicable regulatory instruments**.
- (b) Despite clause 5.1, if in the context of an electricity **customer transferring** from one **retailer** to another **retailer applicable regulatory instruments** permit an estimate of consumption rather than a **meter** reading, the **retailer** may provide the **customer** with an estimated bill prepared on a basis that conforms with the basis used to determine **retailers'** responsibility in the wholesale electricity market for electricity supply under **applicable regulatory instruments**.

5.3 Bill smoothing

Despite clause 5.1, in respect of any 12 month period a **retailer** may provide a **customer** with estimated bills under a bill smoothing arrangement if and only if:

- (a) the following requirements are met:
- the amount payable under each bill is initially the same and is set on the basis of the **retailer's** initial estimate of the amount of **energy** the **customer** will consume over the 12 month period;
 - that initial estimate is based on the **customer's** historical billing data or, where the **retailer** does not have that data, average consumption at the relevant **tariff** calculated over the 12 month period;
 - in the sixth month:
 - (A) the **retailer** re-estimates the amount of **energy** the **customer** will consume over the 12 month period, taking into account any **meter** readings and relevant seasonal factors; and
 - (B) if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect that difference; and
 - at the end of the 12 month period, the **meter** is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and

- (b) the *retailer* has obtained the *customer's explicit informed consent* to the *retailer* billing on that basis.

5.4 Adjustments

- * (a) If a *retailer* has provided a *customer* with an estimated bill, and the *retailer* subsequently reads the *customer's meter* or otherwise gets a reliable *meter* reading or, in the case of gas only, updated data from the *distributor* or from VENCORP, the *retailer* must adjust the bill in accordance with the *meter* reading or the updated data and clause 6.
- (b) Clause 5.4(a) does not apply in respect of an estimate permitted by clause 5.2(a) for gas or, for electricity, by dot point 2 of clause 5.2(a) or by clause 5.2(b) for electricity. Instead, to the extent that *applicable regulatory instruments* permit a substitute or replacement estimate to be used to determine *retailers'* responsibility in the wholesale electricity market for electricity supply or *retailers'* responsibility for gas supply, the *retailer* must adjust the bill based on the substitute or replacement estimate in accordance with clause 6.
- (c) Clause 5.4(a) also does not apply in respect of an estimated bill permitted by clause 5.3.

5.5 Unsuccessful attempt to read

Where an attempt to read the *customer's meter* is unsuccessful due to an act or omission on the part of the *customer*, and the *customer* subsequently requests a *retailer* to replace an estimated bill with a bill based on an actual reading of the *customer's meter*, the *retailer* must use its *best endeavours* to do so and may impose an *additional retail charge* on the *customer* in respect of costs incurred complying with the *customer's* request.

5.6 Unmetered supplies for electricity

Despite clause 5.1, if there is no electricity *meter* in respect of the *customer's supply address*, the *retailer* must base the *customer's* bill on *energy* data which is calculated in accordance with *applicable regulatory instruments*.

5.7 Proportionate billing

Where a *customer's* bill covers a period other than the *customer's* usual *billing cycle* or a period during which the *customer's tariff* changes, the *retailer* must charge in proportion to the relevant periods and clearly show relevant details on the bill.

6. ADJUSTMENT OF A BILL

6.1 Review of a bill

A *retailer* must review a *customer's* bill at the *customer's* request. During the review, the *customer* must pay that portion of the bill under review that the *customer* and the *retailer* agree is not in dispute or an amount equal to the average amount of the *customer's* bills in the previous 12 months (whichever is the lower).

If the bill under review is:

- (a) correct, the *customer* must either pay the unpaid amount or request the *retailer* to arrange a *meter* test in accordance with *applicable regulatory instruments*. If the *customer's meter* is found to comply with *applicable regulatory instruments*, the *customer* must pay the cost of the test and pay the unpaid amount; or
- (b) incorrect, the *retailer* must adjust the bill under clause 6.2 or 6.3.

6.2 Undercharging

If a *retailer* has undercharged or not charged a *customer*, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the *retailer* may recover the amount undercharged from the *customer* but, in doing so, the *retailer* must:

- (a) limit the amount to be recovered as follows:
 - if the undercharging results from a failure of the *retailer's* billing systems, the *retailer* may recover no more than the amount undercharged in the 9 months prior to the date on which the *retailer* notifies the *customer* that undercharging has occurred. To avoid doubt, a *retailer's* billing system fails if the *retailer* does not receive relevant billing data from a *distributor*, no matter whether it is the *retailer* or the *distributor* at fault in respect of that failure; and
 - otherwise, the *retailer* may recover no more than the amount undercharged in the 12 months prior to that date.

To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the *customer's meter* has been read;

- (b) list the amount to be recovered as a separate item in a special bill or in the *customer's* next bill together with an explanation of the amount;
- (c) not charge the *customer* interest on the amount undercharged; and
- (d) offer the *customer* time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.

6.3 Overcharging

Where a *retailer* has overcharged a *customer*, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the *retailer* must inform the *customer* within 10 *business days* of the *retailer* becoming aware of the error and repay the amount in accordance with the *customer's* reasonable instructions or, if no reasonable instructions are given, by crediting the amount on the *customer's* next bill.

7. PAYMENT OF A BILL

7.1 When payment is due

- (a) A *customer* must pay a bill by the pay by date specified in the bill.
- * (b) The pay by date on the initial bill must not be less than 12 *business days* from the date of dispatch.
- (c) Unless the *retailer* specifies a later date, the date of dispatch is the date of the bill.

7.2 Payment methods

- * (a) A *retailer* must accept payment from a *customer* using any of the following payment methods:
 - in person at a network of agencies or payment outlets;
 - by mail; and
 - by direct debit arrangement.
- (b) Before a direct debit arrangement may be used, the *customer* and the *retailer* must agree in *writing*:
 - the amount, preferred date and frequency of the direct debits;
 - that the arrangement may be cancelled through the relevant financial institution or the *retailer*, at the option of the *customer*;
 - that, if the *customer* cancels the arrangement through the financial institution, the *customer* must use *best endeavours* to notify the *retailer* as soon as practicable after the cancellation;
 - that, if the *customer* cancels the arrangement through the *retailer*, the *retailer* must use *best endeavours* to notify the financial institution as soon as practicable after the cancellation;
 - if their *energy contract* is a *market contract*, another payment method to apply if the *customer* cancels the direct debit arrangement; and
 - that, if a *last resort event* occurs in respect of the *retailer*, the *retailer* must immediately cancel the direct debit arrangement and notify both the *customer* and the financial institution of the cancellation.

7.3 Payment in advance

- * On request, a *retailer* must also accept payment from a *customer* in advance.

7.4 Late payment fees

- (a) A **retailer** must not impose a **late payment fee** on any **customer** unless and until, having regard to any **guideline on late payment fees**, the **Commission** has given the **retailer** its approval for the **retailer** to do so.
- (b) In connection with a **customer** having breached the **customer's** obligation to pay an amount due on or before the pay by date on a **retailer's** initial bill, a **retailer** may not impose a **late payment fee** unless:
- the **late payment fee** is imposed by the **retailer** on a **disconnection** warning given to the **customer**; and
 - the **retailer** includes on the **disconnection** warning a statement that the **retailer** will waive the **late payment fee** if the **customer** contacts the **retailer** and they agree to a new instalment plan or other payment arrangement, designed to assist the **customer** with payment difficulties, within five **business days** of the **date of receipt** of the **disconnection** warning.¹
- (c) Despite clauses 7.4(a) and (b), a **retailer** must not impose a **late payment fee** on a **customer**:
- for so long as the **customer** has met all of its payment obligations under such a new instalment plan or other payment arrangement;
 - if the **customer** has made a complaint directly related to the non-payment of the **retailer's** bill to the **retailer** or to the Energy and Water Ombudsman Victoria and the complaint remains unresolved; or
 - in other circumstances as identified in any **guideline on late payment fees**.
- (d) A **retailer** must waive a **late payment fee** imposed on a **customer** if:
- the **customer** has contacted a welfare agency or support service for payment assistance;
 - the **customer** pays the **retailer's** bills in whole or partly by a Utility Relief Grant;
 - the circumstances contemplated by clause 7.4(b) apply; or
 - the **retailer** or the Energy and Water Ombudsman Victoria considers that it would be appropriate for the **retailer** to waive the **late payment fee**.
- (e) The amount of any **late payment fee** must be fair and reasonable having regard to related costs incurred by the **retailer**.

¹ See also clauses 7.4(c) and (d) and the **Commission's guideline on late payment fees** regarding when a **retailer** must not impose a **late payment fee** on a **customer** experiencing payment difficulties and when a **retailer** must waive such a fee.

7.5 Fees and charges for dishonoured payments and merchant service fees

- (a) If a *customer* pays the *retailer's* bill and through fault of the *customer* the payment is dishonoured or reversed, resulting in the *retailer* incurring a fee, the *retailer* may recover the fee from the *customer*. An amount may also be payable by the *customer* under an *agreed damages term*.
- (b) If a *customer* pays the *retailer's* bill using a method which results in the *retailer* incurring a merchant service fee, the *retailer* may only recover the amount of that fee from the *customer* if their *energy contract* is a *market contract*.

7.6 Vacating a supply address

- (a) A *customer* must give a *retailer* notice of the date on which the *customer* intends to vacate, or did vacate, the *customer's supply address*, and a forwarding address to which a final bill may be sent.
- (b) Unless clause 7.6(c) applies, in the case of:
 - a *customer* who demonstrates to the *retailer* that the *customer* was evicted or otherwise forced to vacate the *supply address*, the *customer's* obligation to pay the *retailer* for *energy* consumed at the *customer's supply address* continues until, and terminates with effect from when, the *customer* gives the *retailer* a notice as contemplated by clause 7.6(a); and
 - any other *customer*, the *customer's* obligation to pay the *retailer* for *energy* consumed at the *customer's supply address* continues until, and terminates with effect from, three *business days* after when the *customer* gives the *retailer* a notice as contemplated by clause 7.6(a) or when the *customer* vacates the *supply address* (whichever occurs last).
- (c) The *customer's* obligation to pay the *retailer* for *energy* consumed at the *customer's supply address* may terminate earlier than contemplated in clause 7.6(b) as follows:
 - if the *retailer* and another *customer* enter into a new *energy contract* for the *supply address* (which may be a *deemed contract*), the *customer's* obligation to pay terminates with effect from when the corresponding obligation under the new *energy contract* is effective;
 - if another *retailer* becomes *responsible* for the *supply address*, the *customer's* obligation to pay terminates with effect from when the other *retailer* is so *responsible*; - or
 - if the *supply address* is *disconnected*, the *customer's* obligation to pay terminates with effect from when the *supply address* is *disconnected*.
- (d) To avoid doubt:
 - a *customer* does not avoid liability to a *retailer* for *energy* consumed at a *supply address* by vacating that *supply address*; and

- if the *customer* and the *retailer* have an *energy contract* for another *supply address*, the *retailer* may include in a bill for *energy* consumed at that other *supply address* the amount payable for *energy* consumed at the vacated *supply address* (together with all the other details required by clause 4.2 to be included in respect of both the vacated and the other *supply address*).

PART 3 CREDIT MANAGEMENT

8. REFUNDABLE ADVANCES

8.1 Domestic customers

- (a) A *retailer* may only require a *domestic customer* to provide a *refundable advance* if:
- the *customer* has left a previous *supply address* or has *transferred* to the *retailer* and still owes the *retailer* or former *retailer* more than an amount the *Commission* nominates in any relevant *guideline*;
 - within the previous two years the *customer* has used *energy* otherwise than in accordance with applicable laws and codes;
 - the *customer* is a new *customer* and has refused to provide *acceptable identification*; or
 - the *retailer* decides the *customer* has an unsatisfactory credit rating, but only if the *retailer* has first offered the *customer* an instalment plan and the *customer* has not accepted the offer.
- (b) The amount of the *refundable advance* must not be:
- if the *customer* provides or the *retailer* otherwise has historical billing data for the *customer's* own consumption at the relevant *supply address* over the last four quarters ended before the *refundable advance* is required, more than:
 - (A) for any *energy contract* other than a *dual fuel contract*, 37.5%; and
 - (B) for a *dual fuel contract* where:
 - (i) the *retailer* requires the *refundable advance* because the *retailer* has decided the *customer* has an unsatisfactory credit rating, 25%; and
 - (ii) the *retailer* otherwise requires the *refundable advance*, 37.5%, of the amount billed to the *customer* for the supply and sale of *energy* to the *supply address* over those four quarters; or
 - otherwise, more than the corresponding percentage of the average amount the *retailer* billed *domestic customers* for the supply and sale of *energy* over those four quarters.

8.2 Business customers

A *retailer* may only require a *business customer* to provide a *refundable advance* if the *business customer* does not have a satisfactory *energy* account payment record or the *retailer* decides the *customer* has an unsatisfactory credit rating.

8.3 Credit management guideline

In making decisions about a *customer's* credit rating and in dealing with credit management issues generally, a *retailer* must comply with any relevant *guideline*.

8.4 Use of refundable advances

(a) A *retailer* must pay to a *customer* interest on the amount of a *refundable advance* at the *bank bill rate*. Interest is to accrue daily and is to be capitalised (if not paid) every 90 days.

(b) A *retailer* must repay to a *customer* and in accordance with the *customer's* reasonable instructions the amount of a *refundable advance*, together with accrued interest, within 10 *business days* of the *customer*:

- completing one year's payment (in the case of a *domestic customer*) or two years' payment (in the case of a *business customer*) by the pay by dates on the *retailer's* initial bills; or
- ceasing to take supply at the relevant *supply address*.

If no reasonable instructions are given by the *customer*, a *retailer* must credit the amount of a *refundable advance*, together with accrued interest, on the *customer's* next bill.

(c) A *retailer* may only use a *customer's refundable advance* and accrued interest to offset any amount owed by a *customer* to the *retailer* if the *customer*:

- fails to pay a bill and that results in *disconnection* of the *customer* and the *customer* no longer has a right to be *reconnected* under clause 15.1; or
- vacates the *supply address*, requests *disconnection* or *transfers* to another *retailer*.

(d) If a *retailer* uses a *refundable advance*, the *retailer* must provide to a *customer* an account of its use. The *retailer* must pay any balance of the *refundable advance* to the *customer* within 10 *business days*.

9. SHORTENED COLLECTION CYCLE

9.1 Retailer's right to apply a shortened collection cycle

A *retailer* may only place a *customer* on a shortened collection cycle if:

- (a) in the case of a *domestic customer*, the *retailer* has complied with clause 11.2; and
- (b) in the case of a *domestic customer* or of a *business customer*, the *retailer* has given to the *customer*:
 - reminder notices for three consecutive bills or *disconnection* warnings for two consecutive bills; and
 - prior to the third reminder notice or second *disconnection* warning, a notice informing the *customer* that:
 - (A) receipt of the third reminder notice or second *disconnection* warning may result in the *customer* being placed on a shortened collection cycle;
 - (B) being on a shortened collection cycle means the *customer* will not receive a reminder notice until the *customer* has paid three consecutive bills in the *customer's billing cycle* by the pay by date;
 - (C) alternative payment arrangements may be available; and
 - (D) the *customer* may obtain further information from the *retailer* (on a specified telephone number).

9.2 Notice

A *retailer* must give a *customer* notice that the *retailer* has placed the *customer* on a shortened collection cycle within 10 *business days* of doing so.

9.3 Transitional provision for gas

For gas, references to reminder notices and *disconnection* warnings in clause 9.1 are to reminder notices and *disconnection* warnings given to a *customer* both:

- (a) after the *FRC date* (as defined in the *Retail Rules*); and
- (b) after notice of an intention to invoke shortened collection cycles for applicable *customers* has been given generally on bills for all *customers* in three consecutive *billing cycles* and in *customer* charters distributed during and after those cycles by the *retailer*.

10. SHORTER BILLING CYCLE

10.1 Customer's right to negotiate a shorter billing cycle

A *retailer* and a *customer* may agree a *billing cycle* with a regular recurrent period:

- (a) in the case of an *electricity contract*, of less than three months; and
- (b) in the case of a *gas contract*, of less than two months.

That agreement is not effective unless the *customer* gives *explicit informed consent*. Under the agreement, the *retailer* may impose an *additional retail charge* on the *customer* for making the different *billing cycle* available.

10.2 Former franchise customers

- (a) An electricity *customer* who was a *franchise customer* on 31 December 2000 and on a monthly *billing cycle* continues on and from that date with the same *billing cycle* terms until such time as the *deemed contract* between the *customer* and a *retailer* which commenced on 1 January 2001 terminates.
- (b) A gas *customer* who was a *franchise customer* on 31 August 2001 and on a monthly or two month *billing cycle* continues on and from that date with the same *billing cycle* terms until such time as the *deemed contract* between the *customer* and a *retailer* which commenced on 1 September 2001 terminates.

11. PAYMENT DIFFICULTIES

11.1 Capacity to pay

A *customer* must contact a *retailer* if the *customer* anticipates that payment of a bill by the pay by date may not be possible.

11.2 Assessment and assistance to domestic customers

If:

- (a) a *domestic customer* so contacts a *retailer* and they do not agree on an alternative payment arrangement; or
- (b) the *retailer* otherwise believes the *customer* is experiencing repeated difficulties in paying the *customer's* bill or requires payment assistance,

the *retailer* must:

- (1) assess in a timely way whatever information the *customer* provides or the *retailer* otherwise has concerning the *customer's* capacity to pay, taking into account advice from an independent financial counsellor if the *retailer* is unable to adequately make that assessment;
- (2) on request, make available to the *customer* documentary evidence of the *retailer's* assessment;
- (3) unless the *customer* has in the previous 12 months failed to comply with two instalment plans and does not provide a *reasonable assurance* to the *retailer* that the *customer* is willing to meet payment obligations under a further instalment plan, offer the *customer* an instalment plan; and
- (4) provide the *customer* with details on *concessions* including the Utility Relief Grant Scheme, telephone information about *energy* efficiency and advice on the availability of an independent financial counsellor.

11.3 Energy efficiency field audits

A *retailer* must consider conducting an *energy* efficiency field audit to assist a *domestic customer* to address the difficulties the *customer* may have paying the *retailer's* bills. The *retailer* need only conduct such an audit if the *retailer* and the *domestic customer* reach an agreement to that effect. To avoid doubt, any charge the *retailer* imposes for conducting the audit is not an *additional retail charge*.

11.4 Debt collection

A *retailer*:

- (a) may not commence legal proceedings for recovery of a debt from a *domestic customer* unless and until the *retailer* has complied with all applicable requirements of clause 11.2;
- (b) may not commence legal proceedings for recovery of a debt while a *customer* continues to make payments according to an agreed payment arrangement; and
- (c) must comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the *Trade Practices Act 1974* (Cth).

12. INSTALMENT PLANS

12.1 Options for domestic customers

In offering an instalment plan to a *domestic customer*, a *retailer* must offer each of:

- (a) an instalment plan under which the *customer* may make payments in advance towards the next bill in the *customer's billing cycle*; and
- (b) an instalment plan under which the *customer* may pay any amount in arrears and continue consumption.

12.2 Requirements for an instalment plan

A *retailer* offering an instalment plan must:

- (a) specify the period of the plan and the amount of the instalments (which must reflect the *customer's* consumption needs and capacity to pay), the number of instalments and how the amount of them is calculated, the amount of the instalments which will pay the *customer's* arrears (if any) and estimated consumption during the period of the plan;
- (b) make provision for re-calculating the amount of the instalments where the difference between the *customer's* estimated consumption and actual consumption may result in the *customer* being significantly in credit or debit at the end of the period of the plan;

- (c) undertake to monitor the *customer's* consumption while on the plan and to have in place fair and reasonable procedures to address payment difficulties a *customer* may face while on the plan; and
- (d) provide the *customer* with *energy* efficiency advice and advice on the availability of an independent financial counsellor.

12.3 Business customers

A *retailer* must consider any reasonable request from a *business customer* for, and may impose an *additional retail charge* on the *business customer* if they enter into, an instalment plan.

PART 4 DISCONNECTION

13. GROUNDS FOR DISCONNECTION

13.1 Non-payment of a bill

A *retailer* may only *disconnect* the *supply address* of a *customer*, being a *customer* who fails to pay the *retailer* by the relevant pay by date an amount billed in respect of that *supply address*, if:

- (a) the failure does not relate to an instalment under the *customer's* first instalment plan with the *retailer*;
- (b) the *retailer* has given the *customer*:
 - a reminder notice not less than 14 *business days* from the date of dispatch of the bill. The reminder notice must include a new pay by date which is not less than 20 *business days* from the date of dispatch of the bill. No reminder notice is required if the *customer* is on a shortened collection cycle under clause 9.1; and
 - a *disconnection* warning:
 - (A) if the *customer* is on a shortened collection cycle under clause 9.1, not less than 16 *business days* from the date of dispatch of the bill. The *disconnection* warning must include a new pay by date which is not less than 20 *business days* from the date of dispatch of the bill; or
 - (B) otherwise, not less than 22 *business days* from the date of dispatch of the bill. The *disconnection* warning must include a new pay by date which is not less than 28 *business days* from the date of dispatch of the bill;
- (c) the *retailer* has included in the *disconnection* warning:
 - if the *customer* is a *domestic customer* and has a *dual fuel contract*:
 - (A) a statement that the *retailer* may *disconnect* the *customer's* gas on a day no sooner than seven *business days* after the *date of receipt* of the *disconnection* warning and the *customer's* electricity on a day no sooner than 22 *business days* after the *date of receipt* of the *disconnection* warning; and
 - (B) a statement that *disconnection* of the *customer's* gas may result in a variation of the *tariffs* and terms and conditions of the *dual fuel contract* as provided for in the *dual fuel contract*. If no variation is provided for in the *dual fuel contract* and neither does the *dual fuel contract* provide that there is to be no variation, the *tariffs* and terms and conditions of the *dual fuel contract* are to be varied such that on and from then:

- (i) the timeframe for *disconnecting* the *customer's* electricity is the timeframe stated in the *disconnection* warning;
 - (ii) the supply and sale of electricity otherwise continues at the *tariff*, and on the terms and conditions, that would apply if the *customer* were party to a *deemed contract* under section 37 of the *Electricity Act*; and
 - (iii) the supply and sale of gas otherwise continues at the *tariff*, and on the terms and conditions, that would apply if the *customer* were party to a *deemed contract* under section 44 of the *Gas Act*;
- in any other case, a statement that the *retailer* may *disconnect* the *customer* on a day no sooner than seven *business days* after the *date of receipt* of the *disconnection* warning; and
 - a telephone number for payment assistance enquiries; and
- (d) the *customer* has called the telephone number referred to in paragraph (c) and the *retailer* has responded to the *customer's* enquiry and has provided advice on financial assistance;
- (e) the *customer* is a *domestic customer* and has a *dual fuel contract* with the *retailer* and the *customer's* electricity is to be *disconnected*, the *retailer* has given the *customer* a further *disconnection* warning no less than six *business days* before the electricity is *disconnected*; and
- (f) the *customer* is on a shortened collection cycle under clause 9.1 and the *retailer* has contacted the *customer* in person or by telephone to advise of the imminent *disconnection*,

and, before *disconnection*, the *customer*:

- (1) does not provide a *reasonable assurance* to the *retailer* that the *customer* is willing to pay the *retailer's* bills; or
- (2) does so, but then:
 - does not pay the *retailer* the amount payable by the pay by date on the relevant *disconnection* warning. This does not apply if the *retailer* and the *customer* have agreed to a new payment arrangement;
 - does not agree to a new payment arrangement within five *business days* after the *date of receipt* of the *disconnection* warning; or
 - does not make payments under such a new payment arrangement.

To avoid doubt, if the *customer* does not agree to such a new payment arrangement or does not so make payments under such a new payment arrangement, the *retailer* may *disconnect* the *customer* without again having to observe this clause 13.1.

13.2 Domestic customers without sufficient income

Despite clause 13.1, a *retailer* must not *disconnect* a *domestic customer* if the failure to pay the *retailer's* bill occurs through lack of sufficient income of the *customer* until the *retailer* has also complied with clause 11.2, using its *best endeavours* to contact the *customer* in person or by telephone, and the *customer* has not accepted an instalment plan within five *business days* of the *retailer's* offer.

13.3 Denying access to the meter

A *retailer* may *disconnect* a *customer* if, due to acts or omissions on the part of the *customer*, the *customer's meter* is not accessible for the purpose of a reading for three consecutive bills in the *customer's billing cycle* but only if:

- (a) the *retailer* or the relevant *meter* reader has:
 - used its *best endeavours*, including by way of contacting the *customer* in person or by telephone, to give the *customer* an opportunity to offer reasonable access arrangements;
 - each time the *customer's meter* is not accessible, given or ensured the *retailer's* representative has given the *customer* a notice requesting access to the *customer's meter*; and
 - given the *customer* a *disconnection* warning including a statement that the *retailer* may *disconnect* the *customer* on a day no sooner than seven *business days* after the *date of receipt* of the notice; and
- (b) due to acts or omissions on the part of the *customer*, the *customer's meter* continues not to be accessible.

13.4 Refusal to provide acceptable identification or refundable advance

A *retailer* may *disconnect* a *customer* if the *customer* refuses when required to provide *acceptable identification* (if the *customer* is a new *customer* of the *retailer*) or a *refundable advance* but only if:

- (a) the *retailer* has given the *customer* a *disconnection* warning including a statement that the *retailer* may *disconnect* the *customer* on a day no sooner than 10 *business days* after the *date of receipt* of the notice; and
- (b) the *customer* has continued not to provide the *acceptable identification* or the *refundable advance*.

13.5 A customer's right to request disconnection

On request, a *retailer* must *disconnect* a *customer* and, if requested, finalise the *customer's* account in accordance with the *customer's* request.

14. NO DISCONNECTION

Despite clause 13, a *retailer* must not *disconnect* a *customer*:

- (a) for non-payment of a bill:
- where the amount payable is less than any amount approved by the *Commission* for this purpose in a relevant *guideline*;
 - if the *customer* has made a complaint directly related to the non-payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved;
 - if the *customer* has formally applied for a Utility Relief Grant and a decision on the application has not been made; or
 - if the only charge the *customer* has not paid is a charge not for the supply or sale of *energy*;
- (b) if:
- for electricity, the *customer's supply address* is registered by the relevant *distributor* as a life support machine *supply address*; or
 - for gas, the *customer's supply address* is registered by the *retailer* or a *distributor* as a medical exemption *supply address*. A *retailer* must register a *supply address* as a medical exemption *supply address* if a *customer* requests registration and provides a current medical certificate certifying that a person residing at the *supply address* has a medical condition which requires continued supply of gas; or
- (c) unless otherwise requested by the *customer*:
- after 2 pm (for a *domestic customer*) or 3 pm (for a *business customer*) on a weekday; or
 - on a Friday, on a weekend, on a *public holiday* or on the day before a *public holiday*.

15. RECONNECTION

15.1 Customer's right of reconnection

If a *retailer* has *disconnected* a *customer* as a result of:

- (a) non-payment of a bill, and within 10 *business days* of *disconnection* either:
- the *customer* pays the bill or agrees to a payment arrangement; or
 - being eligible for a Utility Relief Grant, the *customer* applies for such a grant;
- (b) the *customer's meter* not being accessible, and within 10 *business days* of *disconnection* the *customer* provides access or makes available reasonable access arrangements;

- (c) the *customer* obtaining supply otherwise than in accordance with applicable laws and codes, and within 10 *business days* of *disconnection* that ceases and the *customer* pays for the supply so obtained or agrees to a payment arrangement; or
- (d) the *customer* refusing to provide *acceptable identification* or a *refundable advance*, and within 10 *business days* of *disconnection* the *customer* provides it,

on request, but subject to other applicable laws and codes and the *customer* paying any *reconnection* charge, the *retailer* must *reconnect* the *customer*.

15.2 Time for reconnection

- (a) If a *customer* makes a request for *reconnection* under clause 15.1:
 - before 3 pm on a *business day*, the *retailer* must *reconnect* the *customer* on the day of the request; or
 - after 3 pm on a *business day*, the *retailer* must *reconnect* the *customer* on the next *business day* or, if the request also is made before 9 pm and the *customer* pays any applicable additional after hours *reconnection* charge, on the day requested by the *customer*.

A *retailer* and a *customer* may agree that later times are to apply to the *retailer*.

- (b) Despite clause 36.1, the obligation of a *retailer* to *reconnect* a *customer* under clause 15.2(a) is absolute. If *reconnection* does not occur by the relevant time, it is not sufficient to discharge the *retailer's* obligation that the *retailer* may have used *best endeavours* to procure the relevant *distributor* to *reconnect* the electrical system or *natural gas installation* at the *customer's supply address* to the *distributor's* distribution system.

PART 5 LIABILITY

16. NO LIMITATION OF LIABILITY

- (a) A *retailer* must not include any term or condition in its *energy contract* with a *customer*:
- the effect of which is to limit the liability of the *retailer* to the *customer*:
 - (A) for any breach by the *retailer* of their *energy contract*; and
 - (B) for any negligence by the *retailer* in relation to their *energy contract*;
or
 - in the case of a *domestic customer*, requiring the *customer* to take reasonable precautions to minimise the risk of loss or damage to any equipment, premises or business of the *customer* which may result from poor quality or reliability of *energy* supply.
- (b) Clause 16(a) does not prevent the inclusion of a term or condition in an *energy contract*:
- of the sort contemplated by section 68A of the *Trade Practices Act 1974* (Cth) or section 97 of the *Goods Act 1958* or any other similar statutory provision;
 - under which the *customer* acknowledges the extent of the *retailer's* responsibility for the quality and reliability of *energy* supply under their *energy contract*;
 - confirming that, under the *energy contract*, there is no variation or exclusion of the operation of:
 - (A) for electricity, section 117 of the *Electricity Act* or section 78 of the *National Electricity Law*; or
 - (B) for gas, section 232 or 233 of the *Gas Act* or section 33 of the *Gas Safety Act 1997*,(if that is the case); or
 - requiring a *business customer* to take reasonable precautions to minimise the risk of loss or damage to any equipment, premises or business of the *business customer* which may result from poor quality or reliability of *energy* supply.

17. INDEMNITY

A *retailer* must not include an indemnity or other term or condition in its *energy contract* with a *customer* the effect of which is to entitle the *retailer* to recover from the *customer* in respect of:

- (a) any breach by the *customer* of their *energy contract*; or
- (b) any negligence by the *customer* in relation to their *energy contract*,

any greater amount than that which, under the common law (including in equity) or statute, the *retailer* is entitled to as compensation for the *customer's* breach of their *energy contract* or negligence.

18. FORCE MAJEURE

- (a) If but for this clause 18 a *retailer* or a *customer* would commit a *force majeure breach* of their *energy contract*:
 - the obligations of the *retailer* or the *customer* under their *energy contract* are suspended to the extent to which they are affected by the *force majeure event* as long as the *force majeure event* continues; and
 - the *retailer* or the *customer* must give the other prompt notice of that fact including full particulars of the *force majeure event*, an estimate of its likely duration, the obligations affected by it and the extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.
- (b) For the purposes of clause 18(a), if the effects of a *force majeure event* are widespread the *retailer* will be deemed to have given a *customer* prompt notice if it makes the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the *force majeure event* or otherwise as soon as practicable.
- (c) A *retailer* may agree with a *customer* that the *retailer* is not to have the benefit of clause 18(a) in respect of any *force majeure event*.
- (d) A *retailer* or a *customer* claiming a *force majeure event* must use its *best endeavours* to remove, overcome or minimise the effects of the *force majeure event* as quickly as possible. However, this does not require the *retailer* or the *customer* to settle any industrial dispute in any way it does not want to.
- (e) Nothing in this clause 18 nor in any term or condition of a *retailer* and *customer's energy contract* which is not inconsistent with this clause 18 varies or excludes the operation of:
 - for electricity, section 117 of the *Electricity Act* or section 78 of the *National Electricity Law*; and
 - for gas, section 232 or 233 of the *Gas Act* or section 33 of the *Gas Safety Act 1997*.

PART 6 EXPLICIT INFORMED CONSENT AND VARIATION

19. EXPLICIT INFORMED CONSENT

19.1 No inconsistency with the Code

If a *retailer* and a *customer* agree to:

- (a) a term or condition to be included in a new *energy contract*; or
- (b) a new term or condition in addition to the terms and conditions of their existing *energy contract* or instead of one of those terms and conditions,

and the agreed term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*), their agreement is effective, and is deemed to result in a term or condition which is not inconsistent with this Code, only if and from when the *customer* has given *explicit informed consent*.²

19.2 Creation of a new market contract

If a *retailer* and a *customer* have:

- (a) an existing *deemed contract*; or
- (b) an existing *energy contract* which resulted from the acceptance by the *customer* of the *retailer's* relevant *standing offer*,

and:

- (1) they agree to a new term or condition in addition to the terms and conditions of their existing *energy contract* or instead of one of those terms and conditions; and
- (2) the new term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*) and the *customer* has given *explicit informed consent*,

their existing *energy contract* terminates and they enter into a new *market contract* on new terms and conditions including the inconsistent term or condition.

19.3 Quarterly billing cycles for gas contracts

Despite clauses 3.2(b) and 19.2, if in the case of a *gas contract* a *retailer* and a *customer* agree that the *retailer* must issue a bill to the *customer* at least every three months, rather than at least every two months, their existing *gas contract* does not terminate and they do not enter into a new *market contract*.

² A list of asterisked (*) terms and conditions appears in appendix 1.

20. VARIATIONS REQUIRE CUSTOMER'S AGREEMENT

- (a) The *tariff* and any terms and conditions of an *energy contract* between a *customer* and a *retailer* may only be varied by agreement in *writing* between the *customer* and the *retailer*.³
- (b) For the avoidance of doubt, if the amount of the *tariff* changes in accordance with some term or condition of an *energy contract* previously agreed between the *customer* and the *retailer*, no further agreement is required.
- (c) Also for the avoidance of doubt, if the *tariff* and terms and conditions of a *dual fuel contract* vary on *disconnection* by a *retailer* of a *domestic customer's* gas in accordance with and as contemplated by a *disconnection* warning, no further agreement is required.

21. GAZETTE BASED VARIATIONS

21.1 Gazetted tariffs and gazetted terms and conditions

- (a) This clause 21.1 applies despite clause 20(a) in respect of any *energy contract* between a *customer* and a *retailer* which resulted from the acceptance by the *customer* of the *retailer's* relevant *standing offer*.
- (b) Any *energy contract* to which this clause 21.1 applies may provide for variation of a *tariff* applicable to the *customer* but not so that the *tariff* may at any time exceed the corresponding *gazetted tariff* at that time.
- (c) Any *energy contract* to which this clause 21.1 applies may provide that, if a *gazetted term or condition* is varied then, with effect from when that variation takes effect, the terms and conditions of the *energy contract* are varied as follows:
 - if the variation effectively amends an existing *gazetted term or condition*, by amending in the same way the corresponding term or condition of the *energy contract*; or
 - if the variation effectively includes an additional *gazetted term or condition*, by including in the same way a corresponding term or condition in the *energy contract*.

21.2 Deemed contracts

Clause 20(a) does not apply to an *energy contract deemed* to apply between a *customer* and a *retailer* under:

- (a) for electricity, section 37 or section 39 of the *Electricity Act*; or

³ In the case of the variation of some terms and conditions of an *energy contract*, the *customer's explicit informed consent* may also be required if an agreement between the *customer* and the *retailer* to vary the term or condition is to be effective. See clauses 5.1 and 10.1 and the list of asterisked (*) terms and conditions in appendix 1.

(b) for gas, section 44 or section 46 of the *Gas Act*,

to the extent that the *tariff* and terms and conditions under that *deemed contract* may be varied as contemplated by:

(c) for electricity, section 38 of the *Electricity Act*; or

(d) for gas, section 45 of the *Gas Act*.

PART 7 TERM AND TERMINATION

22. TERM

22.1 Commencement

- (a) A *retailer* and a *customer* may agree on a date when their *energy contract* commences to be effective.
- (b) Despite clause 22.1(a):
- if the *energy contract* is to include a term or condition which is inconsistent with a term or condition set out in this Code marked with an asterisk (*);
 - the *energy contract* is a *market contract*; or
 - if the *customer* is *transferring* from another *retailer* (with whom the *customer* had an *energy contract* for the relevant *supply address*) to the *retailer*,

the *energy contract* is not made and therefore cannot commence to be effective before the *customer* has given *explicit informed consent*.

22.2 Commencement of financial responsibility

In respect of each *supply address* of a *customer* which is the subject of an *energy contract* with a *retailer*, the *retailer's* obligation under the energy contract to sell *energy* and the *customer's* obligation under the energy contract to pay for *energy* consumed at the *supply address* do not become binding unless and until:

- (a) for:
- electricity, the *retailer* is *responsible* for the *supply address*; and
 - gas, if the *retailer* acquires gas in a wholesale gas market for retail sale, the *retailer* is *responsible* for the *supply address*; and
- (b) if the *energy contract* is entered into by the *customer* and the *retailer* in connection with the termination of another *energy contract* between them for the *supply address*, the expiry of any *cooling-off period* in respect of the new *energy contract*.

23. COOLING-OFF

23.1 Customer's right to cancel an energy contract

- (a) Beyond any right a *customer* may have to cancel an *energy contract* under the *FT Act*, the *customer* may cancel the *energy contract* if the *energy contract* is a *market contract* or arises from the acceptance of a *standing offer*.

- (b) Unless the *customer* has a longer cancellation period under the *FT Act*, to cancel an *energy contract* a *customer* must give a cancellation notice to the *retailer* within:
- if the *energy contract* is for electricity and it is an *energisation contract* or it is for gas and is in respect of a *supply point* which requires only unplugging or installation of a *meter* to allow the flow of gas, 5 *business days* from and including the *relevant date*; and
 - otherwise, 10 *business days* from and including the *relevant date*.

23.2 No right to cancel deemed contracts

A *customer* has no right under this Code to cancel a *deemed contract*.

23.3 Effect of cancellation

Appendix 2 applies in respect of the cancellation of an *energy contract* which is neither a *door-to-door agreement* nor a *non-contact sales agreement*.

23.4 Documenting energy contracts and customers' cancellation rights

- (a) On or before the second *business day* after the *relevant date* in respect of their *energy contract*, a *retailer* must give a *customer*:
- a copy of the *energy contract* or other document evidencing the *energy contract* which sets out the *tariff* and all of the terms and conditions of the *energy contract* including:
 - (A) the total consideration to be paid or provided by the *customer* under the *energy contract* or, if the total consideration is not ascertainable at the time the *energy contract* is entered into, the manner in which it is to be calculated; and
 - (B) any *additional retail charges* or other charges or fees to be paid by the *customer* or which the *customer* may become liable to pay, including any payable on cancellation.

The *retailer* must comply with any relevant *guideline* in preparing this document; and

- if the *customer* has a right to cancel the *energy contract*, a notice advising the *customer* of the *customer's* right to cancel the *energy contract*, accompanied by a further form of notice which sets out the name and address of the *retailer* and the date and details of the *energy contract* which may be used by the *customer* to cancel the *energy contract*.
- (b) A *retailer* will be taken to have given the document and notices required by clause 23.4(a) on the second *business day* after the *relevant date* if by then the *retailer* has posted the document and notices to the *energy customer*.

24. TERMINATION

24.1 Termination by customer

- (a) A *customer* may terminate an *energy contract* with a *retailer*.
- * (b) If a *customer* is not a *deemed customer* and wants to terminate an *energy contract* with a *retailer* under clause 24.1(a), the *customer* must give the *retailer* 28 days notice.
- (c) If a *customer* is a *deemed customer* and wants to terminate an *energy contract* with a *retailer* under clause 24.1(a), the *deemed customer* need not give any notice.
- (d) If an *energy contract* is:
- a *fixed term contract* and it is terminated by the *customer* under clause 24.1(a); or
 - an *evergreen contract* and it is terminated by the *customer* under clause 24.1(a) before the *maturity date*,
- the *retailer* may impose an early termination fee on the *customer* if:
- their *energy contract* includes details of the amount or manner of calculating the early termination fee; and
 - the imposition of an early termination fee in the circumstances is not prohibited by any relevant *guideline*.

24.2 Termination for customer's breach

A *retailer* may not terminate an *energy contract* with a *customer* for the *customer's* breach of their *energy contract* unless:

- (a) the breach is one conferring on the *retailer* a right to *disconnect* the *customer* under clause 13, the *retailer* has *disconnected* the *customer* at all relevant *supply addresses* and the *customer* no longer has a right under clause 15.1 to be *reconnected*; or
- (b) the *customer* and the *retailer* enter into a new *energy contract*, or the *customer* has *transferred* to another *retailer*, in respect of all relevant *supply addresses*,

(whichever occurs first).

24.3 Expiry of fixed term contract

If the *energy contract* between a *customer* and a *retailer* is a *fixed term contract*:

- (a) prior to the expiry of the fixed term, the *retailer* must notify the *customer* of the following information:

- that the *energy contract* is due to expire;
- when the expiry will occur;
- of the *tariff* and terms and conditions that will apply to the *customer* beyond the expiry of the fixed term if the *customer* does not exercise any other option (which the *retailer* may determine at its discretion); and
- what the *customer's* other options are. These include:
 - (A) the *customer* requesting that the *customer's local retailer*, which may be the *retailer*, make the *customer* a *standing offer*; and
 - (B) the *customer* entering into a *market contract* with the *retailer* or any other *retailer*.

The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the *customer* at the commencement of the fixed term); and

- (b) on and from the expiry of the fixed term unless by then the *customer* has entered into another *energy contract* for the relevant *supply address*, the *energy contract* between the *customer* and the *retailer* continues at the *tariff* and on the terms and conditions the subject of the *retailer's* notice under clause 24.3(a). Despite clause 20(a), the agreement of the *customer* to any variation in the *tariff*, terms and conditions is not required.

24.4 Termination of deemed contract

For the purposes of:

- (a) section 39(5)(b) of the *Electricity Act*; or
- (b) section 46(5)(b) of the *Gas Act*,

a *deemed contract* under that section comes to an end at the end of the period covered by the second bill issued by the *retailer* to the *customer*.

24.5 From when termination is effective

Despite any other term or condition of their *energy contract*, the termination of an *energy contract* between a *customer* and a *retailer* is not effective until:

- (a) if the *energy contract* is terminated because the *customer* and the *retailer* enter into a new *energy contract* for a relevant *supply address*, the expiry of any *cooling-off period* in respect of the new *energy contract*;
- (b) if the *energy contract* is terminated because the *customer* wants to *transfer* to another *retailer* in respect of a relevant *supply address*, when the other *retailer* becomes *responsible* for that *supply address*; or

- (c) if the *energy contract* is terminated in connection with a relevant *supply address* having been *disconnected*, when the *customer* no longer has a right under clause 15.1 to be *reconnected*,

(whichever occurs last).

PART 8 GENERAL

25. ACCESS TO SUPPLY ADDRESS

A *customer* must allow a *retailer* or the *retailer's* representative safe, convenient and unhindered access to the *customer's supply address* and *meter* for the purpose of reading the *customer's meter* and for *connection, disconnection* and *reconnection*. The *retailer* or the *retailer's* representative must carry or wear official identification and, on request, show that identification to the *customer*.

26. PROVISION OF INFORMATION

26.1 Contact details

A *customer* must inform a *retailer* as soon as possible of any relevant change to contact details.

26.2 Retailer's charter

- (a) A *retailer* must give a copy of its charter to a *customer*:
- at or as soon as practicable after the time the *customer* is *connected* at a new *supply address* or *transfers* from another *retailer* to the *retailer*;
 - on request by the customer following which the copy is to be handed to the *customer* or posted to the customer's address within two *business days* of the request.
 - where the customer is a *deemed customer*, as soon as practicable after their *energy contract* begins.
- (b) The charter must include details of the rights, entitlements and obligations of *retailers* and *customers* relating to the sale of *energy* and other aspects of their relationship under this Code and other applicable law and codes.
- (c) On request, a *retailer* must provide the charter to a *customer* in large print or, if the *retailer* has a significant number of *customers* from the same non-English speaking background as the *customer*, in the *customer's* non-English language.
- (d) A *retailer* must periodically include a statement on a *customer's* bills that, on request, the *customer* is entitled to a free copy of the *retailer's* charter.

26.3 This Code

On request, a *retailer* must give to a *customer* a copy of this Code (which, if so requested, must be a large print copy). The *retailer* may impose an *additional retail charge* on the *customer* for this. A *retailer* must also inform a *customer* of any amendment to this Code that materially affects the *customer's* rights, entitlements and obligations as soon as reasonably practicable after this Code is amended.

26.4 Advice on available tariffs

- (a) On request, a *retailer* must provide a *customer* with reasonable information on *tariffs* the *retailer* may offer to the *customer*. The information must be given to the *customer* within 10 *business days* of the *customer's* request and, if the *customer* requests it, in *writing*.
- (b) A *retailer* must give notice to a *customer* of any variation to the *retailer's tariffs* that affects the *customer*. The notice must be given as soon as practicable and in any event no later than the *customer's* next bill.

26.5 Concessions

On request, a *retailer* must provide to a *domestic customer* information on all *concessions*.

26.6 Energy efficiency advice

On request, a *retailer* must provide *energy* efficiency advice to a *customer*.

26.7 Information from retailer to distributor

As soon as practicable, a *retailer* must:

- (a) provide the relevant *distributor* with confirmation from a registered medical practitioner or a hospital that a person residing at a *customer's supply address* requires a life support machine or otherwise has a medical condition that requires continued supply, if the *customer* provides that confirmation to the *retailer*; or
- (b) inform the relevant *distributor* that the *customer's supply address* is affected by a fault, if the *customer* provides that information to the *retailer*.

27. HISTORICAL BILLING INFORMATION

27.1 Records

A *retailer* must retain a *customer's* historical billing data for at least two years, even though in the meantime the *customer's energy contract* with the *retailer* may have terminated.

27.2 Historical billing data

- (a) On request, a *customer's* current *retailer* must provide to the *customer* any of the *customer's* historical billing data then retained by the *retailer* for any period nominated by the *customer*. The *retailer* may impose an *additional retail charge* on the *customer* but only if the request is not the first request made by the *customer* within the preceding year or the data requested relates to a period prior to the preceding two years.
- (b) If a *customer* has *transferred* to another *retailer* and requests from its previous *retailer* historical billing data relating to a period within two years prior to the date of the request then, even though the *customer's energy contract* with the previous *retailer* may otherwise have terminated, the previous *retailer* must provide the *customer* with any of the data then retained by the *retailer* and requested by the *customer*. The previous *retailer* may impose an *additional retail charge* on the *customer* for the provision of this information.
- (c) A *retailer* must use its *best endeavours* to provide historical billing data to a *customer* within 10 *business days* of the *customer's* request or such other period they agree.
- (d) If historical billing data is required for the purposes of handling a genuine complaint made by a *customer*, in no circumstances may a *retailer* charge the *customer* for providing the data.

28. COMPLAINTS AND DISPUTE RESOLUTION

28.1 Complaint handling

A *retailer* must handle a complaint by a *customer* in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth). The *retailer* must include information on its complaint handling processes in the *retailer's* charter.

28.2 Advice on customer's rights

When a *retailer* responds to a *customer's* complaint, the *retailer* must inform the *customer*:

- (a) that the *customer* has a right to raise the complaint to a higher level within the *retailer's* management structure; and
- (b) if, after raising the complaint to a higher level the *customer* is still not satisfied with the *retailer's* response, the *customer* has a right to refer the complaint to the Energy and Water Ombudsman Victoria or other relevant external dispute resolution body. This information must be given in *writing*.

28.3 Energy and Water Ombudsman Victoria

A *retailer* must include the phone number of the Energy and Water Ombudsman Victoria on any *disconnection* warning.

29. PRIVACY AND CONFIDENTIALITY

A *retailer* must comply with any condition of its retail licence, and with any relevant *guideline*, concerning the use or disclosure of personal information about a *customer*.

30. ILLEGAL CONSUMPTION

- (a) Despite clause 6.2, if a *retailer* has undercharged or not charged a *customer* as a result of the *customer's* fraud or consumption of electricity intentionally otherwise than in accordance with applicable law or codes, the *retailer* may estimate the consumption for which the *customer* has not paid and take debt recovery action for all of the unpaid amount.
- (b) Clause 11.2 does not apply if, in the *customer's* dealings with the *retailer*, the *customer* is convicted of an offence involving fraud or theft.

31. ADDITIONAL RETAIL CHARGES

A *retailer* may impose an *additional retail charge* on a *customer*:

- (a) if their *energy contract* is a *market contract*, whether or not the imposition of an *additional retail charge* is expressly provided for in a term or condition set out in this Code; and
- (b) otherwise, only where the imposition of an *additional retail charge* is expressly provided for in a term or condition set out in this Code.

The amount of any *additional retail charge* must be fair and reasonable having regard to related costs incurred by the *retailer*.

32. AGREED DAMAGES TERMS

- (a) Any *agreed damages term*, whether providing for a *late payment fee*, an early termination fee or otherwise, must either include the amount that will be payable by the *customer* to the *retailer* for the *customer's* breach of their *energy contract* or include a simple basis for determining that amount.
- (b) The amount payable by a *customer* under an *agreed damages term* must be a fair and reasonable pre-estimate of the damage the *retailer* will incur if the *customer* breaches their *energy contract*, having regard to related costs likely to be incurred by the *retailer*.

33. NOTICES

- (a) A notice, consent, document or other communication given by a *retailer* under an *energy contract* must be in *writing* and given by hand, by fax, by mail or by e-mail.

- (b) Clause 33(a) does not apply if a term or condition set out in this Code provides or otherwise contemplates that a notice, consent, document or other communication may be given by a *retailer* otherwise than in *writing*.

34. ASSIGNMENT

- (a) A *retailer* may only *assign* the *retailer's energy contract* with a *customer* with the *customer's* consent.
- (b) Clause 34(a) does not apply if the *assignment* forms part of the transfer to the same third party of all or substantially all of the *retailer's* retail sales business.

PART 9 DEFINITIONS AND INTERPRETATION

35. DEFINITIONS

In this Code, including the preamble, unless the context otherwise requires:

acceptable identification in relation to:

- (a) a *domestic customer*, includes one or more of the following: a driver's licence, a current passport or other form of photographic identification, a Pensioner Concession Card or other current entitlement card issued by the Commonwealth or a birth certificate;
- (b) a *business customer* which is a sole trader or partnership, includes one or more of the forms of identification for a *domestic customer* for each of the individuals that conduct the business; and
- (c) a *business customer* which is a company, includes the company's Australian Company Number or Australian Business Number.

additional retail charge means a charge relating to the sale of *energy* by a *retailer* to a *customer* other than a charge based on the *tariff* applicable to the *customer* and which must be calculated in accordance with clause 31 of this Code. To avoid doubt:

- (a) any network charge relating to the supply, but not sale, of *energy* to a *customer's supply address* is not an *additional retail charge* (whether or not the network charge is bundled in the *retailer's tariff*);
- (b) without limiting paragraph (a), any charge the *retailer* may impose as a direct pass through of a distribution tariff, excluded service charge for electricity, ancillary reference tariff for gas or other charge imposed on the *retailer* by a *distributor* for *connection* to, or use of, the *distributor's* distribution system is not an *additional retail charge*; and
- (c) any amount payable by a *customer* to a *retailer* for the *customer's* breach of their *energy contract*, whether under an *agreed damages term* or otherwise, is not an *additional retail charge*.

agreed damages term means a term or condition of an *energy contract* under which a *customer* and a *retailer* have agreed the amount, or a basis for determining the amount, that will be payable by the *customer* to the *retailer* for the *customer's* breach of their *energy contract*.

applicable regulatory instruments may include (but is not necessarily limited to) one or more of the following:

- (a) for electricity:
 - the *National Electricity Code*;
 - the *Metrology Procedure*;

- the *Electricity Customer Transfer Code*; and
 - the *Electricity Customer Metering Code*; and
- (b) for gas:
- the *Gas Distribution System Code*;
 - the *Retail Rules*; and
 - the *Market and System Operation Rules*;

or any other regulatory instrument which substitutes, amends or supplements any of the above.

assigned meter identifier means:

- (a) for electricity, the National Meter Identifier assigned to the *customer's* metering installation; and
- (b) for gas, the Meter Installation Reference Number assigned to the *customer's* metering installation.

assignment includes dispose of, declare a trust over or otherwise create an interest in rights under an *energy contract*.

bank bill rate in respect of the interest a *retailer* must pay to a *customer* on the amount of a *refundable advance*, means a daily published rate no less than the pre-tax rate of return the *retailer* would earn over the period the *retailer* retains that amount if it were invested in bank bills that have a tenor equal to 90 days.

best endeavours in relation to a person, means the person must act in good faith and do what is reasonably necessary in the circumstances.

billing cycle means the regular recurrent period in which a *customer* receives a bill from a *retailer*.

business customer means a *customer* who is not a *domestic customer*.

business day means a day other than a Saturday or Sunday or a *public holiday*.

checksum means:

- (a) for electricity, the National Meter Identifier checksum; and
- (b) for gas, the Meter Installation Reference Number checksum.

Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*.

concession means a concession, rebate or grant including, without limitation, those known as or relating to:

- (a) Winter Energy Concession;
- (b) Life Support Machines;
- (c) Group Homes;
- (d) Multiple Sclerosis or Associated Conditions;
- (e) Service to Property Charge Supply Concession;
- (f) Property Transfer Fee Waiver; and
- (g) Utility Relief Grant Scheme.

connect means:

- (a) for electricity, the making and maintaining of contact between the electrical systems of two persons allowing the supply of electricity between those systems; and
- (b) for gas, the joining of a *natural gas installation* to a distribution system *supply point* to allow the flow of gas.

cooling-off period in respect of an *energy contract* means any period within which the *customer* has a right to cancel the *energy contract*.

customer means a person other than:

- (a) for electricity, a *retailer*; and
- (b) for gas, a participant or market participant as defined in the *Market and System Operation Rules*,

who buys or proposes to buy electricity from a *retailer*.

date of receipt in relation to a notice given by a *retailer* means:

- (a) if the *retailer* hands the notice to the *customer*, the date the *retailer* does so;
- (b) if the *retailer* leaves the notice at the *customer's supply address*, the date the *retailer* does so; or
- (c) if the *retailer* gives the notice by post, a date two *business days* after the date the *retailer* posts the notice.

deemed in respect of an *energy contract* means an *energy contract* deemed to apply between a *customer* and a *retailer* under the *Electricity Act* or the *Gas Act* and *deemed contract* has a corresponding meaning.

deemed customer means a person who is *deemed* to have an *energy contract*.

disconnect means:

- (a) for electricity, the disconnection of contact between the electrical systems of two persons preventing the supply of electricity between those systems; and
- (b) for gas, the separation of a *natural gas installation* from a distribution system to prevent the flow of gas.

distributor means a person who holds, or in the case of electricity only is exempt from holding, a distribution licence under the *Electricity Act* or the *Gas Act*.

domestic customer means a *customer* who purchases *energy* principally for personal, household or domestic use at the relevant *supply address*.

door-to-door agreement means a contact sales agreement under and to which Division 2 of Part 4 of the *FT Act* applies.

dual fuel contract means an *energy contract* for the sale of electricity and for the sale of gas by a *retailer* to a *customer*, or two *energy contracts* between the same *customer* and the same *retailer*, one an *electricity contract* and one a *gas contract*, under which *billing cycles* for electricity and gas are synchronised. The *dual fuel contract* may also oblige the *retailer* to *connect* the *customer's supply address* or to otherwise procure the supply of electricity or of gas or of both electricity and gas.

Electricity Act means the *Electricity Industry Act 2000*.

electricity contract means a contract for the sale of electricity by a *retailer* to a *customer*. The *electricity contract* may also oblige the *retailer* to *connect* the *customer's supply address* or to otherwise procure the supply of electricity.

Electricity Customer Metering Code means the industry code of that name certified by the *Commission*.

Electricity Customer Transfer Code means the industry code of that name certified by the *Commission*.

energisation contract means an *electricity contract* under which, or in connection with, the *customer's supply address* must be *connected* and all that is required to effect the *connection* is the insertion of a fuse or the operation of switching equipment which results in there being a non-zero voltage beyond the point of supply.

energy means electricity or gas or both electricity and gas.

energy contract means an *electricity contract* or a *gas contract* and may include a *dual fuel contract*.

evergreen contract means an *energy contract*, other than a *fixed term contract*, which includes a *maturity date*.

explicit informed consent has the same meaning as in the relevant *retailer's* retail licence.

fixed term contract means an **energy contract** the term of which continues for a fixed, certain or definite period including, in the case of a **deemed contract**, any fixed, certain or definite period under or contemplated by the **Electricity Act** or the **Gas Act**.

force majeure breach means a breach by a **retailer** or a **customer** of their **energy contract** which, but for clause 18, the **retailer** or the **customer** would commit arising only through a **force majeure event**.

force majeure event means an event outside the reasonable control of a **retailer** or a **customer**.

franchise customer in relation to the period ending on:

- (a) for electricity, 31 December 2000; and
- (b) for gas, 31 August 2001,

means a franchise customer within the meaning of:

- (c) for electricity, the **Electricity Industry Act** 1993 immediately before 1 January 2001; and
- (d) for gas, the **Gas Industry Act** 1994 immediately before 1 September 2001.

FRC date means the date on which there ceases to be in effect an Order made under section 35 of the **Gas Act** (i.e., the date from which all **customers** will be able to choose their gas **retailer**).

FT Act means the **Fair Trading Act** 1999.

Gas Act means the **Gas Industry Act** 2001.

gas contract means a contract for the sale of gas by a **retailer** to a **customer**. The **gas contract** may also oblige the **retailer** to **connect** the **customer's supply address** or to otherwise procure the supply of gas.

Gas Distribution System Code means the code of that name certified by the **Commission**.

gazetted tariff at any time means a **tariff** determined by a **retailer** and published by the **retailer** in the Government Gazette and at that time effective under:

- (a) for electricity, section 35 of the **Electricity Act**; and
- (b) for gas, section 42 of the **Gas Act**.

A **gazetted tariff** corresponds with a **tariff** applicable to a **customer** under an **energy contract** if it is the **tariff** that a **retailer** would be required to offer to the **customer** if the **customer** at that time made a request for a **standing offer** in respect of the relevant **supply address**.

gazetted term or condition at any time means a term or condition determined by a **retailer** and approved by the **Commission** and published by the **retailer** in the Government Gazette and at that time effective under:

- (a) for electricity, section 35 of the **Electricity Act**.
- (b) for gas, section 42 of the **Gas Act**.

goods has the meaning set out in clause 10 of appendix 2.

guideline means a guideline published by the **Commission**.

late payment fee means an amount payable by a **customer** to a **retailer** in connection with the **customer** having breached the **customer's** obligation to pay an amount due on or before the pay by date on the **retailer's** initial bill.

last resort event in respect of a **retailer** means when:

- (a) the **retailer's** retail licence is suspended or revoked; or
- (b) the right of the **retailer** to acquire:
 - for electricity, electricity from the wholesale electricity market; and
 - for gas, gas from a wholesale gas market or a producer,is suspended or terminated,

whichever first occurs.

local retailer has the same meaning :

- (a) for electricity, as made under Order-in-Council S11 dated 11.1.02 in accordance with section 35 of the **Electricity Act**; and
- (b) for gas, as made under Order-in-Council S197 dated 29.10.02 in accordance with section 42 of the **Gas Act**.

market contract means an **energy contract** between a **customer** and a **retailer** which is not a **deemed contract** nor an **energy contract** arising from the acceptance of a **standing offer**.

Market and System Operation Rules means the rules referred to in Division 1 of Part 4 of the **Gas Act**.

maturity date in respect of an **energy contract** means a date included in the **energy contract** on which a fixed, certain or definite period ends:

- (a) before which, if the **customer** terminates the **energy contract**, the **retailer** may have a right to impose an early termination fee; and

- (b) after which, if the *customer* terminates the *energy contract*, the *retailer* has no right to impose an early termination fee.

meter in respect of a *customer* means:

- (a) for electricity, the device which measures and records the consumption of electrical energy consumed at the *customer's supply address*; and
- (b) for gas, an instrument that measures the quantity of gas passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of gas.

Metrology Procedure means the Victorian Electricity Supply Industry Metrology Procedure published under the *National Electricity Code*.

National Electricity Code means the Code approved in accordance with section 6(1) of the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the *National Electricity (Victoria) Act 1997*.

natural gas installation means any gas equipment located at a *customer's supply address* downstream of the *supply point* that is not part of a distribution system.

non-contact sales agreement means a non-contact sales agreement under and to which Division 3 of Part 4 of the *FT Act* applies.

public holiday means a public holiday appointed under the *Public Holidays Act 1993*.

reasonable assurance in relation to a *customer's* willingness to pay means a fair and reasonable expectation, based on all the circumstances leading to, and which are anticipated to follow, the assurance that the *customer* will pay.

reconnect means to connect following a disconnection.

refundable advance means an amount of money or other arrangement acceptable to a *retailer* as security against a *customer* defaulting on a final bill.

related contract or instrument in relation to an *energy contract* means any other contract or instrument that is collateral or related to the *energy contract*.

relevant customer means a person, or a member of a class of persons, to whom an Order under:

- (a) for electricity, section 36 of the *Electricity Act*; and
- (b) for gas, section 43 of the *Gas Act*,

applies.

relevant date in respect of an *energy contract* means:

- (a) the date on which the *customer* and the *retailer* agree to enter into the *energy contract*; or

- (b) if the *customer's explicit informed consent* is required under clause 22.1(b) before the *energy contract* can commence to be effective, the date on which the *explicit informed consent* is given.

responsible in respect of a *retailer* and a *supply address* means the *retailer* is responsible for the *energy* supplied at the *supply address* for the purposes of settlement of a relevant wholesale *energy* market under *applicable regulatory instruments*.

retailer means a person who holds a retail licence under the *Electricity Act* or under the *Gas Act*.

Retail Rules means the relevant retail gas market rules (as defined in Division 2 of Part 4 of the *Gas Act*) applicable to the *customer's supply point*.

second tier electricity customer means, in respect of the relevant *supply address*, the *customer* who purchases electricity otherwise than directly and in its entirety from the *retailer* that is the *local retailer* in respect of that *supply address*.

standing offer means an offer made by a *retailer* as contemplated by:

- (a) for electricity, section 35 of the *Electricity Act*; and
(b) for gas, section 42 of the *Gas Act*.

supply address includes:

- (a) for electricity, the relevant market connection point (as defined in the *National Electricity Code*) in respect of that supply address; and
(b) for gas, the point where gas leaves the distribution system before being supplied to a *customer*, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

supply point means the point where gas or electricity leaves the distribution system before being supplied to the customer, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

tariff means a price for the supply or sale of *energy*.

telephone marketing agreement means a telephone marketing agreement under and to which Division 2A of Part 4 of the *FT Act* applies.

transfer in respect of a *customer* and two *retailers*, means that *responsibility* for the relevant *supply address* of the *customer* has transferred from one of the *retailers* to the other.

writing includes any mode of representing or reproducing words, figures, drawings or symbols in visible form.

36. INTERPRETATION

36.1 Connection, disconnection and reconnection

A *retailer* is not in a position to *connect, disconnect* or *reconnect* the electrical system or *natural gas installation* at a *customer's supply address* to a *distributor's* distribution system. In this Code unless the context otherwise requires, a reference in a term or condition to a *retailer*:

- (a) having a right or not having a right to *disconnect a customer* is to be construed as a reference to the *retailer* having a right or not having a right to procure the *distributor* to *disconnect*; or
- (b) being obliged to *connect, disconnect* or *reconnect a customer* is to be construed as a reference to the *retailer* being obliged to use its *best endeavours* to procure the *distributor* to *connect, disconnect* or *reconnect*,

the electrical system or *natural gas installation* at the *customer's supply address* to the *distributor's* distribution system.

36.2 General

In this Code including the preamble, unless the context otherwise requires:

- (a) headings and footnotes are for convenience or information only and do not affect the interpretation of this Code or of any term or condition set out in this Code;
- (b) words importing the singular include the plural and vice versa;
- (c) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
- (d) a reference to a clause or appendix is to a clause or appendix of this Code;
- (e) a reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document;
- (g) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (h) other parts of speech and grammatical forms of a word or phrase defined in this Code have a corresponding meaning;
- (i) a period of time:

- which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (j) a reference to:
- time is a reference to Standard Time within the meaning of the *Summer Time Act 1972* and not Summer Time within the meaning of that Act;
 - a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
 - a month is a reference to a calendar month; and
- (k) an event which is required under any term or condition set out in this Code to occur on or by a stipulated day which is not a ***business day*** may occur on or by the next ***business day***.

Appendix 1 Variation by Agreement

A list of the terms and conditions set out in this Code which are marked with an asterisk (*) follows:

- Clause 3.2(a) and (b)
- Clause 4.2(k).
- Clause 4.4(a).
- Clause 5.4(a).
- Clause 7.1(b).
- Clause 7.2(a).
- Clause 7.3.
- Clause 24.1(b).

Appendix 2 Cooling-off Where Fair Trading Act 1999 does not Apply

1. Application

Appendix 2 applies in respect of the cancellation of an *energy contract* which is neither a *door-to-door agreement* nor a *non-contact sales agreement*. As such this appendix 2 covers *telephone marketing agreements* and *energy contracts* to which Part 4 of the *FT Act* does not apply.

2. Related contracts and instruments

A *retailer* and a *customer* must not enter into a *related contract or instrument* unless the *related contract or instrument* provides that, if the *energy contract* is cancelled during the *cooling-off period*, the *related contract or instrument* is deemed to be void.

3. Retailer must comply

The *retailer* cannot enforce the *energy contract* against the *customer* if the *retailer* fails to comply with clause 23.4.

4. How can the customer cancel the energy contract?

(a) A notice of cancellation must be in *writing* and may be given:

- by leaving it at or posting it to the address of the *retailer* shown on the form of notice of cancellation accompanying the notice given by the *retailer* under clause 23.4; or
- by faxing it to the facsimile number of the *retailer* shown on that form; or
- if the form of notice of cancellation is not given by the *retailer* to the *customer*, by leaving it at or posting it to the last known place of business of the *retailer*.

(b) A *customer* will be taken to have given notice of cancellation by the end of the *cooling-off period* if by then the *customer* has posted the notice to the *retailer*.

5. What is the effect of cancellation?

(a) If an *energy contract* is cancelled during the *cooling-off period*:

- the *energy contract* is deemed to have been rescinded by mutual consent;
- any *related contract or instrument* is void; and
- by mutual consent, a new agreement is entered into under which the *retailer* and the *customer* have the respective rights and obligations contemplated by clauses 6, 7 and 8 of this appendix 2.

- (b) Any such new agreement is not a *related contract or instrument* in relation to the *energy contract*.
- (c) Despite clause 5(a) of this appendix 2, no such new agreement is entered into by a *customer* and a *retailer* if, on cancellation of the *energy contract*, there is *deemed* to be another *energy contract* between them under:
 - for electricity, section 39(2) of the *Electricity Act*; and
 - for gas, section 46(2) of the *Gas Act*.

6. What must the retailer do on cancellation?

If the *energy contract* is cancelled within the *cooling-off period*, the *retailer* must immediately repay to the *customer* any money paid by the *customer* under the *energy contract* or a *related contract or instrument*.

7. What can the retailer charge on cancellation?

- (a) The *retailer* may impose an *additional retail charge* for any *goods* supplied under the *energy contract* which the *customer* is unable to return on cancellation of the *energy contract* and for any *goods* consumed by the *customer* after cancellation.
- (b) If the *goods* contemplated by clause 7(a) of this appendix 2 include an amount of *energy* supplied to a *supply address* for which the *retailer* is *responsible*, the *retailer* may apply the *tariff* applicable to the *retailer's deemed contracts* under:
 - for electricity, section 39 of the *Electricity Act*; and
 - for gas, section 46 of the *Gas Act*,to the amount of *energy* as part of the *additional retail charge*.
- (c) The *retailer* may impose an *additional retail charge* for services rendered under the *energy contract* before it is cancelled.
- (d) Despite clauses 7(a) and (c) of this appendix 2, a *retailer* may not impose any charge in respect of any costs incurred by the *retailer* in performing its obligation under clause 23.4.
- (e) The *retailer* may deduct an amount payable by a *customer* under this clause 7 of appendix 2 from any money required to be paid to the *customer* under clause 6 of this appendix 2.

8. What must the customer do on cancellation?

- (a) If the *customer* cancels an *energy contract* during the *cooling-off period*, the *customer* must immediately return any *goods* supplied by the *retailer* under the *energy contract* which the *customer* is able to return or notify the *retailer* of the place where the *retailer* may collect the *goods*.

- (b) If the *customer* gives such a notice to the *retailer* and the *retailer* does not collect the *goods* within 30 days after the cancellation of the *energy contract*, the *goods* become the property of the *customer* free of any other right or interest.
- (c) If the *customer* fails to take reasonable care of *goods* which are returned to the *retailer* or collected by the *retailer* under this clause 8 of appendix 2, the *customer* is liable to pay compensation to the *retailer* for any damage to or depreciation in the value of the *goods*.

9. Payment for services during cooling-off period

During the *cooling-off period*, the *customer* is not required to pay for any *goods* or services provided under the *energy contract* during that period. Nothing in this clause removes the customer's existing obligation to pay for electricity or gas supplied under their existing contract.

10. Goods includes electricity and gas

In this appendix 2, *goods* includes electricity and gas.